

REMARKS

The above amendment with the following remarks is submitted to be fully responsive to the Official Action of May 8, 2003. Reconsideration of this application in light of the amendment and the allowance of this application are respectfully requested.

Initially, it is noted that claim 2 has been indicated as containing allowable subject matter if rewritten in independent form. In response, new claim 9 is hereby added to reflect in independent form all the limitations of dependent claim 2 and original claim 1. Thus, it is believed that newly added independent claim 9 is allowable.

Claims 1, 3, 4, and 6-8 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,984,564 to Yuen or U.S. Patent No. 5,634,937 to Mollenauer et al. Also, claims 1 and 3-8 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,545,179 to Williamson, IV. In response, claim 1 has been amended to clarify the present invention. As a result, and for the reasons stated hereinbelow, it is respectfully requested that independent claim 1 is neither anticipated nor rendered obvious by the prior art cited by the Examiner.

Newly amended independent claim 1 is allowable over the cited prior art for the following reasons. Admittedly, Yuen, Williamson, IV and Mollenauer et al. each disclose an access assembly including an inflatable sleeve or balloon for positioning in and extending through an incision. However, the inflatable sleeve of the Yuen reference does not perform the function of the sealing means as recited in independent claim 1. Specifically, the Yuen sleeve is an open surgical retractor; it is not a device suitable for patient pneumoperitoneum since the device has a central opening which is not sealed during the operating procedure. That is, the sleeve of Yuen does not prevent substantial leakage of gas from the body cavity on inflation when in an inoperative position as specifically recited for the function of the sealing means in independent claim 1. Nor does Yuen suggest that the sealing means, i.e. inflatable sleeve, molds to a substantial portion of a surgeon's hand or surgical instrument in an operating position. Thus, on this basis alone, Yuen cannot

anticipate the present invention as recited in newly amended independent claim 1. Further, neither Williamson, IV nor Mollenauer et al. disclose a distal body cavity engagement means for insertion into the incision to locate the device in position. Likewise, Mollenauer et al. does not disclose a proximal fixing means for attaching the device to a patient's skin. Although both these references do disclose the balloon in contact with the interior of the patient's body cavity and Mollenauer et al. suggests the balloon contacts the patient's skin, claim 1 of the present application recites both the distal engagement means and the proximal fixing means as distinct features from the sleeve and sealing means. Williamson, IV and Mollenauer et al. merely suggest the use of the sleeve or the sealing means for contacting the inner or outer portion of the patient's body but do not disclose distinct features for attaching and positioning as recited in claim 1. Therefore, Williamson, IV and Mollenauer et al. should not be viewed as including all the features of recited claim 1 and therefore do not anticipate the present invention as recited in independent claim 1.

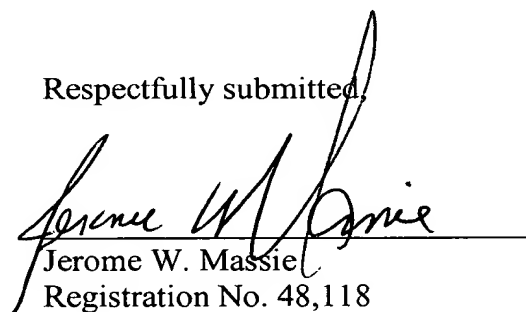
Moreover, importantly, independent claim 1 specifically requires the sealing means to include an inflatable first seal for engaging and retracting the incision and a second inflatable seal for sealing the lumen of the tube or sleeve bore. However, neither Yuen, Williamson, IV nor Mollenauer et al. suggest such an assembly. As discussed hereinabove, Yuen does not disclose a second inflatable seal for sealing the lumen of the tube or sleeve bore and does not prevent substantial leakage of gas from the body cavity on inflation when in an inoperative position. With respect to Williamson, IV and Mollenauer et al., it should be noted that independent claim 1 of the present application specifically requires that the sealing means operate on the sleeve. Williamson, IV and Mollenauer et al. nowhere suggests a sealing means which operates on the sleeve. If the outer layer of the balloons disclosed in Williamson, IV and Mollenauer et al. correspond to the inflatable first seal recited in claim 1 while the inner layer of the balloon corresponds to the second inflatable seal recited in claim 1, then there are no other elements in Williamson, IV and Mollenauer et al. to form the sleeve. That is, independent claim 1 specifically recites a sleeve and then separately recites a sealing means which includes two

seals. Simply put, the Williamson, IV and Mollenauer et al. references fail to disclose a sealing means operating on a sleeve and if the balloon structure of these prior art references are viewed as the inner and outer seal, then the prior art references fail to suggest a sleeve which is operated on by a sealing means. Interpreting the balloon of Williamson, IV and Mollenauer et al. to include the structure and function of essentially most if not all elements of independent claim 1 is inconsistent with the direct language of claim 1. Therefore, it is believed that Yuen, Williamson, IV and Mollenauer et al. do not anticipate the present invention as recited in newly amended independent claim 1.

Accordingly, reconsideration and withdrawal of the present rejections under 35 U.S.C. §102 based on Yuen, Williamson, IV and Mollenauer et al. are in order and respectfully requested. Likewise, it is believed that dependent claims 3-8 are likewise allowable in that they depend from what is believed to be allowable base claim 1.

In view of the foregoing, it is submitted that the present application is in condition for allowance and a notice to that effect is respectfully requested. However, if the Examiner deems that any issue remains after considering this response, he is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,



Jerome W. Massie
Registration No. 48,118

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, D.C. 20004-2128
(202) 585-8000
(202) 585-8080 (Fax)

Dated: November 7, 2003